Filed 4/6/04 Dec Associates v. Construction Brokers CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DEC ASSOCIATES, Plaintiff and Appellant, v. CONSTRUCTION BROKERS, INC., Defendant and Respondent.	G031840 (Super. Ct. No. 02CC13240) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William M. Monroe, Judge. Affirmed.

Hartnett & Hayes, Patrick M. Hartnett and Michael A. Boswell for Plaintiff and Appellant.

Thompson & Alessio, Kris P. Thompson and John D. Alessio for Defendant and Respondent.

* * *

Plaintiff Dec Associates (Dec) appeals from a judgment of dismissal following an order granting defendant Construction Brokers, Inc.'s (Construction

Brokers) motion to quash service for lack of personal jurisdiction. Because defendant Construction Brokers does not have sufficient minimum contacts with California to create personal jurisdiction, we affirm.

I

FACTS

Construction Brokers has its principal place of business in Kansas City, Missouri. In 2001, it was awarded a contract to remodel a casino boat for Harrah's Entertainment Group. The casino boat was located in Kansas City.

The plans for the refurbishment of the boat called for special glass fiber reinforced gypsum columns. Dec, a California corporation, was represented by sales agent Joe Czarnecki, whose address was in Winston-Salem, North Carolina. Czarnecki sent Construction Brokers a letter introducing Dec and soliciting Construction Brokers' business.

Dec's proposed purchase order stated the terms were "F.O.B. our plant, Anaheim, California." No forum selection or other clause pertinent to jurisdiction was included. The signed purchase order was returned via facsimile. After the purchase order was signed, numerous contacts occurred between Dec, Construction Brokers, and the project architect. Additionally, drawings were exchanged.

The columns were shipped from Anaheim in August 2001. Construction Brokers claimed the columns were damaged and refused to pay. Dec subsequently filed suit in Orange County Superior Court, and Construction Brokers' successful motion to quash followed.

II

DISCUSSION

Standard of Review

Because there is no conflict in the pertinent evidence, we review the matter de novo. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons Companies*).)

Personal Jurisdiction in California

As stated in *Vons Companies, supra,* 14 Cal.4th 434, "California's long-arm statute authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code Civ. Proc., § 410.10.) A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate '"traditional notions of fair play and substantial justice."' [Citations.]" (*Id.* at pp. 444-445.)

"Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are 'substantial . . . continuous and systematic.' [Citations.] In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' [Citations.] Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction. [Citation.]" (*Vons Companies, supra,* 14 Cal.4th at pp. 445-446.)

"If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be

subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' [Citations.]" (*Vons Companies, supra,* 14 Cal.4th at p. 446.)

"When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.] Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. [Citation.]" (*Vons Companies, supra,* 14 Cal.4th at p. 449.)

Specific Jurisdiction

Dec does not argue that the exercise of general jurisdiction over Construction Brokers would be appropriate, and we agree. Dec instead asserts we should find that specific jurisdiction is proper. The test for specific jurisdiction consists of two parts. First, we consider whether the defendant "purposefully availed" itself of forum benefits and whether the controversy relates to the defendant's contacts with the forum. (*Vons Companies, supra,* 14 Cal.4th at p. 446.) If the first prong is met, we must then consider whether exercise of jurisdiction would be reasonable. (*Id.* at p. 449.)

The United States Supreme Court explained the meaning of "purposeful availment" in *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462 (*Burger King*): "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, [citations] or of the 'unilateral activity of another party or a third person,' [citation]. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State. [Citations] Thus where the defendant 'deliberately' has engaged in significant activities within a

State, [citation], or has created 'continuing obligations' between himself and residents of the forum, [citation], he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." (*Id.* at p. 475-476.)

Entering into a contract with a California party is not sufficient to establish purposeful availment. (*Burger King supra,* 471 U.S. at p. 478.) "Rather, a court must evaluate the contract terms and the surrounding circumstances to determine whether the defendant purposefully established minimum contacts within the forum. Relevant factors include prior negotiations, contemplated future consequences, the parties' course of dealings, and the contract's choice-of-law provision. [Citation.]" (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 907.)

None of these factors favors Dec. All prior negotiations took place between Construction Brokers' Kansas City office and Dec's North Carolina-based agent. The record does not reveal that any future consequences were contemplated. The parties' course of dealings consisted primarily of contacts between Construction Brokers and Dec's agent, and the contract had no choice of law provision or forum selection clause.

Dec relies heavily on the purchase order term "F.O.B. our plant, Anaheim, California" to support its argument that Construction Brokers "purposefully availed" itself of the benefits of doing business in California. Dec asserts that because title transferred to Dec within California under the F.O.B. term, "the transaction was therefore consummated within California." In support of its argument that taking title of goods in California is sufficient to create jurisdiction, Dec cites *Henry R. Jahn & Son v. Superior Court* (1958) 49 Cal.2d 855 (*Jahn*). *Jahn*, of course, long predates *Burger King*'s purposeful availment test and other recent minimum contacts jurisprudence.

Even so, the facts of *Jahn* are sharply distinguishable from the instant case. The plaintiff and Jahn had entered into a series of three-party contracts pursuant to a plan to market grain driers in Central and South America. These contracts were implemented over a two-year period. (*Jahn, supra,* 49 Cal.2d at p. 857.) The plaintiff alleged that Jahn and a partnership conspired to steal its trade secrets and take over its business, and sought injunctive relief. (*Id.* at pp. 857-858.)

Noting that "Jahn's purchase of goods in this state is a regular part of its business," the court found jurisdiction proper. (*Jahn, supra,* 49 Cal.2d at p. 859.) "We need not here determine whether an action arising from an isolated purchase of goods here through interstate communication would subject Jahn to the jurisdiction of the California courts. Jahn made regular purchases from plaintiff as its exclusive export agent. It took title to the goods in this state. It directed its agent how and where to ship them. Even after it ceased doing business with plaintiff, it entered into a similar course of business dealings with defendant partnership. It reaped the benefits of our laws that protected its goods while they were here, and it had access to our courts to enforce any rights in regard to these transactions. The alleged cause of action grew directly out of Jahn's relationship with plaintiff and the partnership in this state." (*Jahn, supra,* 49 Cal.2d at p. 861.)

The only similarity to this case is the one Dec hangs its hat on, specifically, the fact that Construction Brokers, like Jahn, took title to the goods in California. Yet that alone was not determinative, but simply one fact that demonstrated significant contacts between Jahn and California. Equally relevant were Jahn's "regular purchases," and continued course of dealings with both plaintiff and the partnership over a lengthy period of time. (*Jahn, supra,* 49 Cal.2d at p. 861.) No such facts are present here, which involves a single purchase of goods from an out-of-state company with no other contacts in California.

A single transaction can be sufficient to create jurisdiction, but it must create a substantial connection between the defendant and the forum state. A single or occasional act that creates only an "attenuated" connection with the forum is insufficient. (*Burger King supra,* 471 U.S. at p. 475, fn. 18.) The contact Dec relies upon here — taking title in California — is just such an attenuated connection. Taking title in California, without more, does not demonstrate "the defendant 'deliberately' has engaged in significant activities within a State, [citation], or has created 'continuing obligations' between himself and residents of the forum, [citation] . . . ." (*Id.* at p. 476.) The legal act of taking title alone is not "significant," nor does it create "continuing obligations" that demonstrate Construction Brokers purposefully availed itself of the benefits of doing business in California. (*Ibid.*; *Vons Companies, supra,* 14 Cal.4th at p. 446.) Indeed, taking title in California is not a "benefit" at all; it is an additional obligation without benefit, and does not alone demonstrate purposeful availment.

The other cases Dec cites to bolster its argument are not especially persuasive. Dec relies primarily on *Rocklin De Mexico, S. A. v. Superior Court* (1984) 157 Cal.App.3d 91, to support its claim that "Passage of the title of goods to an out-of-state buyer within California is sufficient to find jurisdiction of California courts over the buyer." Yet *Rocklin,* like *Jahn,* involved multiple purchases over a period of time, not a single transaction as in the case before us, and the court's decision was based on the defendant's "regular purchasing activity." (*Id.* at pp. 93-95.) The case does not discuss whether taking title alone within the forum state is sufficient for jurisdiction.

Indeed, other cases involving single purchases of goods by an out-of-state buyer have not found jurisdiction proper, although they involved more substantial contacts than the case before us. In *Futuresat Industries, Inc. v. Superior Court* (1992) 3 Cal.App.4th 155, (*Futuresat*) the plaintiff offered the following facts to justify jurisdiction over the defendants: "[T]he buyer is a publicly owned corporation; it initiated the transaction and obtained credit from plaintiff; the transaction involved

ongoing negotiations spanning a six-month period; and some five months after initiating the transaction, the purchaser showed interest in another purchase. . . . [Plaintiff] particularly emphasized the fact that [defendants] initiated a 'substantial' sales purchase for a total price of $55,000, secured by promissory notes payable in California." (*Futuresat, supra,* 3 Cal.App.4th at p. 160.)

The court found these facts insufficient to justify jurisdiction, noting: "The facts here are very similar to those in *Interdyne Co. v. SYS Computer Corp.*, *supra*, 31 Cal.App.3d 508, and *Belmont Industries, Inc. v. Superior Court*, *supra*, 31 Cal.App.3d 281. Both involved transactions negotiated in interstate commerce and purchase orders executed by buyers outside of California. As here, the defendants in those cases maintained no economic presence in this state and did not do business here. The factor which [plaintiff] seeks to rely on, that it did not initiate the transaction, is no different than the *Belmont Industries* case where the defendant initially established contact also. [Citation.]" (*Futuresat, supra,* 3 Cal.App.4th at p. 161.)

The facts supporting jurisdiction are no stronger in this case. (See also *Hunt v. Superior Court* (2000) 81 Cal.App.4th 901.) Like the defendants in *Futuresat* and the cases cited therein, Construction Brokers maintains no economic presence in California and does not conduct business here. Dec, not Construction Brokers, initiated the transaction at issue through its North Carolina sales agent. The only contacts between Construction Brokers and California related specifically to this transaction, and were limited to telephone calls and letters, most of which were with Dec's North Carolina agent. Taking title in California, without more, simply does not create the type of "substantial" contacts sufficient to justify haling the defendant before California courts.

Because we conclude the minimum contacts standard was not met, we need not reach the "reasonableness" prong of the analysis. The constitutionally required due process standard for specific jurisdiction has not been met, and therefore the trial court correctly quashed service of process on Construction Brokers.

III

DISPOSITION

The judgment of dismissal is affirmed. Construction Brokers is entitled to its costs on appeal.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.